
ORDINANCE NO C-32855

An ordinance relating to the abatement of chronic nuisance properties; adding a new chapter, SMC10.08A.

Whereas, the City Council has determined that a small percentage of persons who own or control real property in this City have allowed their property to be used for illegal purposes or have otherwise failed to properly maintain their property, and such property has become a chronic nuisance property which has created a significant impact upon the living conditions in the city's neighborhoods and has raised justifiable concerns about public safety; and

Whereas, the City Council has determined that chronic nuisance properties interfere with the comfort, health, solitude and quality of life of the individuals residing in the neighborhood, and lower the value of surrounding properties; and

Whereas, the City Council has determined that existing laws have not sufficiently encouraged such persons to take reasonable steps to abate the nuisances that their property is creating;

Whereas, the City Council has determined that enhanced penalties will give such property owners additional incentives to ameliorate the problems that their property is creating, and that some property owners will never act responsibly unless their property is subject to such abatement procedures;

Whereas, chronic nuisance properties create a negative financial impact upon City services by numerous calls for service from various City departments

The City of Spokane does ordain:

That there be added a new chapter, SMC Chapter 10.08A, to read as follows:

10.08A.010 Purpose

Chronic nuisance properties present grave health, safety and welfare concerns, which the property owners or persons in charge of such properties have failed to take corrective action to abate the nuisance condition. Chronic nuisance properties have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located. This chapter is enacted to remedy nuisance activities that repeatedly occur or exist at chronic nuisance properties by providing a process for abatement; and this remedy is not an exclusive remedy available under any state or local laws and may be used in conjunction with such other laws.

Also, chronic nuisance properties are a financial burden to the city by the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such property, and this chapter is a means to ameliorate those conditions and hold responsible the owners or persons in charge of such property.

10.08A.020 Definitions

For purposes of this chapter, the following words or phrases shall have the meaning prescribed below:

(1) “**Abate**” means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this chapter by such means and in such a manner and to such an extent as the applicable city department director or designee determines is necessary in the interest of the general health, safety and welfare of the community;

(2) “**Control**” means the ability to regulate, restrain, dominate, counteract or govern property, or conduct that occurs on a property;

(3) “**Chronic nuisance property**” means property on which three or more nuisance activities occur or exist during any sixty-day period;

(4) “**Drug-related activity**” means any unlawful activity at a property which consists of the manufacture, delivery, sale, storage, possession, or giving away of any controlled substance as defined in chapter 69.50 RCW, legend drug as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW;

(5) “**Landlord**” means the owner, lessor, or sublesor of the dwelling unit or the property of which it is a part, and in addition, means any person designated as a representative of the landlord;

(6) “**Nuisance activity**” means and includes:

(a) a nuisance as defined by state law or local ordinance occurring around or near the property; or

(b) any of the following activities, behaviors or criminal conduct:

(i) stalking, SMC 10.11.060;

(ii) harassment, SMC 10.11.070 through 072 and SMC 10.11.079;

(iii) failure to disperse, SMC 10.10010;

(iv) disorderly conduct, SMC 10.10.020;

(v) assault, SMC 10.11.010, including d.v. assault, SMC 10.09;

(vi) reckless endangerment, SMC 10.11.020;

(vii) prostitution, SMC 10.06.030;

(viii) patronizing a prostitute, SMC 10.06.010;

(ix) disorderly house, as defined by SMC 10.06.010;

(x) indecent exposure, SMC 10.06.025;

(xi) lewd conduct, SMC 10.06.020;

(xii) any firearms violation listed in SMC 10.11.042 through 10.11.050;

(xiii) noise, SMC 10.08.020;

(xiv) loitering for the purpose of engaging in drug related activity, SMC 10.15.020;

(xv) drug related activity;

(xvi) gang related activity (as defined in RCW 59.118.030), and

(xvii) any attempt to commit and/or conspiracy to commit any of the above activities, behaviors or conduct;

(7) “**Owner**” means any person having any interest in the real estate in question as indicated in the records of the office of the Spokane County Auditor, or who establishes under this chapter, their ownership interest therein;

(8) “**Person**” means natural person, joint venture, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, officer or employee of any of them;

(9) “**Person associated with a property**” means any person who, on the occasion of a nuisance activity, has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit a property or a person present on property, including without limitation, any officer, director, customer, agent, employee, or any independent contractor of a property, or a person in charge of or owner of a property;

(10) “**Person in charge**” of a property means any person, in actual or constructive possession of a property, including but not limited to an owner, occupant, agent, or property manager of a property under his or her control;

(11) “**Premises and property**” may be used by this chapter interchangeably and means any building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof including property used as residential or commercial property;

(12) “**Rental unit**” means any structure or that part of a structure, including but not limited to single family home, room or apartment, which is rented to another and used as a home, residence, or sleeping place by one or more persons;

10.08A.030 Violation

(1) Any property within the City of Spokane which is a chronic nuisance property is in violation of this Chapter and subject to its remedies; and

(2) Any person in charge who permits property to be a chronic nuisance property shall be in violation of this chapter and subject to its remedies.

10.08A.040 Procedure

(1) When the Chief of Police, or his designee, receives police documentation confirming the occurrence of three or more nuisance activities within a sixty day period on the property, the Chief of Police, or his designee, may review such reports to determine whether they describe the nuisance activities enumerated in 10.08A.020. Upon such a finding, the Chief of Police, or his designee, shall notify a property owner at the address shown on the County Auditor records and shall notify the person in charge of the property in writing that the property is in danger of being declared a chronic nuisance property.

(2) The notice shall contain:

(a) the street address or a legal description sufficient for identification of the property;

(b) a concise description of the nuisance activities that exist, or that have occurred on the property;

(c) a demand that the owner or person in charge respond to the chief or his designee within ten days of service of the notice to discuss the nuisance activities and create a plan to abate the chronic nuisance;

(d) offer the person in charge an opportunity to abate the nuisance activities giving rise to the violation; and

(e) a statement describing that if legal action is sought, the property could be subject to closure, civil penalties and/or costs assessed up to one hundred dollars per day after the notice of the chronic nuisance property is received.

(3) Such notice shall be either (a) personally served, or (b) delivered by first class mail to the person in charge of the property with a copy mailed to the owner at the address indicated by the Spokane County Auditor, if different than the person in charge of the property.

(4) If the person in charge fails to respond to the notice within the time prescribed, the Chief of Police, or his designee shall post such notice at the property and issue the person in charge a class one civil infraction. If the person in charge fails to respond to the issued infraction the matter shall be referred to the Office of the City Attorney for further action.

(5) If the person in charge responds as required by the notice and agrees to abate the nuisance activity, the Chief of Police, or his designee, and the person in charge and/or property owner, may work out an agreed upon course of action which would abate the nuisance activity. If an agreed course of action does not result in the abatement of the nuisance activities or if no agreement concerning abatement is reached, the matter shall be forwarded to the Office of the City Attorney for enforcement action.

(6) It is a defense to an action for chronic nuisance property that the person in charge at all material times could not, in the exercise of reasonable care or diligence, determine that the Property had become chronic nuisance property, or could not in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is chronic nuisance property.

10.08A.050 Commencement of Action - Enforcement

(1) Once the matter is referred to the City Attorney, the City Attorney shall immediately review and make a determination to initiate legal action authorized under this chapter or state statute, or may seek alternative forms of abatement of the nuisance activity. The City Attorney may initiate legal action on the chronic nuisance property and seek civil penalties and costs in superior court for the abatement of the nuisance.

(2) In determining whether a property shall be deemed a chronic nuisance property and subject to the court's jurisdiction, the City shall have the initial burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property. The City may submit official police reports and other affidavits outlining the information that led to arrest(s), and other chronic nuisance activity occurring or existing at the property. The failure to prosecute an individual, or the fact no one has been convicted of a crime is not a defense to a chronic nuisance action.

(3) Once a superior court determines the property to be a chronic nuisance under this Chapter the court may impose a civil penalty against any or all of the persons in charge of

the property and/or the owner of the property, and may order any other relief deemed appropriate. A civil penalty may be assessed for up to one hundred dollars per day for each day the nuisance activity continues to occur following the date of the original notice by the Chief of Police, or his designee, as described in SMC 10.08A.040. In assessing the civil penalty, the court may consider the following factors, citing to those found applicable: (a) the actions taken by the person in charge and/or owner to mitigate or correct the nuisance activity; (b) the financial condition of the persons in charge; (c) the repeated or continuous nature of the nuisance activity; (d) the statements of the neighbors or those affected by the nuisance activity; and (e) any other factor deemed relevant by the court.

(4) The superior court which determined the property to be a chronic nuisance property shall also assess costs against the person in charge and/or owner in the amount it costs the City to abate, or attempt to abate, the nuisance activity.

(5) If the superior court determines the property to be a chronic nuisance property, the superior court shall order the property closed and secured against all unauthorized access, use and occupancy for a period up to one year, and may impose a civil penalty and costs.

(6) Once a determination has been made by the superior court that the chronic nuisance property shall be subject to closure the court may authorize the City to physically secure the premises and initiate such closure. Costs for such closure shall be submitted to the Court for review. Any civil penalty and/or costs awarded to the City may be filed with the city treasurer who shall cause the same to be filed as a lien on the property with the County Treasurer. The City shall file a formal *lis pendens* notice when an action for abatement is filed in the superior court.

(7) The superior court shall retain jurisdiction during any period of closure or abatement of the property.

(8) Spokane Municipal Court is to have jurisdiction of all civil infractions issued pursuant to this chapter.

10.08A.060 Summary Closure

Nothing in this chapter prohibits the City from taking any emergency action for the summary closure of such property when it is necessary to avoid an immediate threat to public welfare and safety. The City may take summary action to close the property without complying with the notification provisions of Section 10.08A.030, but shall provide such notice as is reasonable under the circumstances.

10.08A.070 Severability

If any portion of this ordinance, or its application to any person or circumstances, is held invalid, the validity of the ordinance as a whole, or any other portion thereof, or the application of the provision to other persons or circumstances is not affected.

10.08A.080 Sunset Clause

This provision shall be repealed three years from the date of adoption, unless reauthorized by the City Council.

Passed by the City Council June 25, 2001

ROB HIGGINS, Council President

TERRI L. PFISTER, City Clerk